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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Liberty West Regional Center LLC,

No. CV-13-02021-PHX-DGC

10 Plaintiff,

ORDER

11 v.

12 Salvatore Carpanzano, et al.,

13 Defendants.
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15 Defendant JP Morgan Chase Bank, N.A. (“JP Morgan”) has filed a motion to
16 dismiss for failure to state a claim under Rule 12(b)(6) of the Federal Rules of Civil
17 Procedure. Doc. 32. The motion is fully briefed. For the reasons that follow, the Court
18 will deny the motion.¹

19 **I. Background.**

20 On July 22, 2011, Plaintiff deposited \$2,700,000 into an escrow account with JP
21 Morgan, pursuant to an escrow agreement. Doc. 1, ¶¶ 14-15. The following year, JP
22 Morgan notified Plaintiff that it was planning to “get out of the business” of providing
23 escrow services. *Id.*, ¶ 17. Plaintiff was subsequently introduced to Defendant Samba
24 Financial Group Escrow & Consulting Services U.S.A. LLC (“Samba”), and its
25 representative, Defendant Salvatore Carpanzano. *Id.*, ¶ 18; Doc. 37 at 3. Carpanzano
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28 ¹ The request for oral argument is denied because the issues have been fully
briefed and oral argument will not aid the Court’s decision. *See* Fed. R. Civ. P. 78(b);
Partridge v. Reich, 141 F.3d 920, 926 (9th Cir. 1998).

1 allegedly represented that Samba would place Plaintiff's funds "in an account at Citibank
2 at its branch office in Scarsdale, New York," and further represented that Samba was a
3 subsidiary of Samba Financial Group. Doc. 1, ¶ 19, 20. Plaintiff alleges that during the
4 course of its investigation of Samba and Carpanzano, it contacted Gregory Shea, an
5 employee of JP Morgan, and "inquired if he had ever heard of [Carpanzano or Samba]."
6 *Id.*, ¶ 23. Mr. Shea apparently said he had heard of both, but provided Plaintiff with no
7 additional information. *Id.*, ¶ 24. On December 10, 2012, JP Morgan wired the
8 \$2,700,000 in Plaintiff's account to Citibank. *Id.*, ¶ 26. Carpanzano is alleged to have
9 converted Plaintiff's funds for his own personal benefit. *Id.*, ¶ 33.

10 Prior to this transaction, JP Morgan was involved in litigation commenced on
11 December 20, 2011, by a man named Rick Scott in Texas state court (the "Texas
12 Action"). *Id.*, ¶ 28. That action was removed to the United States District Court for the
13 Northern District of Texas. *Id.* The action centered around a claim by Scott that a
14 company called American National Trust, represented by Carpanzano, had absconded
15 with \$2,000,000 he had deposited with JP Morgan in order to secure financing for a
16 Bahamian resort. Doc. 37 at 3-4. Plaintiff alleges that, as a result of the Texas Action, JP
17 Morgan "knew or had reason to know that Defendant Carpanzano was not trustworthy,
18 had perpetrated other fraudulent and otherwise dishonest schemes using escrow
19 arrangements, and was likely to abscond with or otherwise purloin any funds in escrow,"
20 and that it accordingly had a duty to warn Plaintiff of these facts. Doc. 1, ¶ 30.

21 JP Morgan claims that although it and one of its employees were named as
22 defendants in the Texas Action, it was dismissed when the plaintiff filed his first
23 amended complaint, only added back briefly as a "relief defendant," and then ultimately
24 dismissed in May 2012. Doc. 32 at 3-4. JP Morgan claims that at the time of its final
25 dismissal, "there had been no finding that Carpanzano in fact controlled American
26 National Trust or that he had otherwise been involved in converting Scott's funds." *Id.* at
27 4. JP Morgan argues it was not in possession of any information that would have
28 triggered a duty to Plaintiff. *Id.* at 6.

II. Legal Standard.

When analyzing a complaint for failure to state a claim to relief under Rule 12(b)(6), the well-pled factual allegations are taken as true and construed in the light most favorable to the nonmoving party. *Cousins v. Lockyer*, 568 F.3d 1063, 1067 (9th Cir. 2009). Legal conclusions couched as factual allegations are not entitled to the assumption of truth, *Ashcroft v. Iqbal*, 556 U.S. 662, 680 (2009), and therefore are insufficient to defeat a motion to dismiss for failure to state a claim, *In re Cutera Sec. Litig.*, 610 F.3d 1103, 1108 (9th Cir. 2010). To avoid a Rule 12(b)(6) dismissal, the complaint must plead enough facts to state a claim to relief that is plausible on its face. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). This plausibility standard “is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 556). “[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged – but it has not ‘show[n]’ – ‘that the pleader is entitled to relief.’” *Id.* at 679 (quoting Fed. R. Civ. P. 8(a)(2)).

III. Analysis.

Under Arizona law, there is generally “no duty to disclose information received by an escrow agent unless such a duty is required by the terms of the agreement[.]” *Berry v. McLeod*, 604 P.2d 610, 616 (Ariz. 1979). There is, however, an exception to this rule “when the escrow agent knows that a fraud is being committed on a party to an escrow and the failure of the escrow agent to disclose the information of the fraud will assist in accomplishing the fraud[.]” *Id.* “[U]nder such conditions the escrow agent has a duty to disclose the facts actually known.” *Id.* The Arizona Supreme Court has clarified that although *Berry* “does not require [an] escrow agent to investigate and search for fraud,” it also “does not permit [an] escrow agent to close its eyes in the face of known facts and console itself with the thought that no one has yet confessed fraud.” *Burkons v. Ticor Title Ins. Co. of Cal.*, 813 P.2d 710, 718 (Ariz. 1991). Put another way, “if the *facts actually known* to the escrow agent present substantial evidence of fraud, there is a duty

1 to disclose.” *Id.* at 720 (emphasis in original).

2 JP Morgan argues that “Plaintiff’s theory of liability fails to meet the ‘plausibility’
3 test necessary to state a claim for relief” under *Iqbal*, 556 U.S. at 678. Doc. 32 at 2. JP
4 Morgan asserts that “Plaintiff cannot plausibly demonstrate that [JP Morgan] had
5 sufficient (or even any) evidence that Carpanzano, as an alleged representative of Samba,
6 might abscond with Plaintiff’s funds[.]” *Id.* at 6. Additionally, it contends, neither
7 Carpanzano nor Samba was a party to the transaction it was overseeing and it was
8 therefore under no duty to disclose any allegations against them in the Texas Action. *Id.*
9 JP Morgan further asserts that Plaintiff has not pleaded any facts showing that “Mr. Shea,
10 their assigned escrow officer, had any knowledge regarding the allegations made against
11 Carpanzano in the Texas Litigation.” *Id.* at 7.

12 Plaintiff counters that an escrow agent is not required to have actual evidence of
13 fraud, but rather “what a ‘reasonable escrow agent would perceive as evidence of fraud.’”
14 Doc. 37 at 9 (citing *Burkons*, 813 P.2d at 718). Plaintiff further contends that it has
15 alleged sufficient facts to “trigger” JP Morgan’s duty to disclose because it has alleged
16 that Mr. Shea stated that he had heard of Carpanzano and Samba. *Id.* at 11.

17 Plaintiff has pleaded that JP Morgan was party to litigation involving allegations
18 of fraud against Carpanzano, namely that he absconded with funds placed in escrow, and
19 that JP Morgan was thus aware of those allegations. Plaintiff has also pleaded that an
20 employee of JP Morgan, when asked in connection with Plaintiff’s escrow transaction,
21 acknowledged that he had heard of both Samba and Carpanzano. Accepting these
22 allegations as true, as the Court must at the motion to dismiss stage, the Court concludes
23 that Plaintiff has stated a claim for relief. Plaintiff could plausibly prove that the facts
24 actually known to JP Morgan would be perceived by a reasonable escrow agent as
25 “evidence of fraud.” *See Burkons*, 813 P.2d at 718. The Court cannot decide what facts
26 were actually known to JP Morgan in the context of a motion to dismiss. The Court will
27 therefore deny JP Morgan’s motion.

Dated this 18th day of February, 2014.

David G. Campbell

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